The Path of Peace as a Conflict Resolution of Ordinary Crimes in Criminology Perspective in Indonesia

Agus Budianto*

Pelita Harapan University, Indonesia

Abstract: A peaceful path as a conflict resolution against general criminal acts can be realized in the provisions of criminal reform in the 2014 RKUHP in Indonesia. however, this RKUHP has come into conflict with the public over several crucial articles, so that the President of Indonesia said to cancel the application in 2019. As a result, several general criminal offences are still being processed in the Criminal Justice System. This paper is the result of a juridical the sociological study, with the main data being primary in the form of interviews with several informants with non-random sampling technique and using a case approach and deductive analysis. The results showed that the use of imprisonment on defendants of criminal offences to provide a deterrent effect was wrong. The application of imprisonment does not change the convict for the better, coupled with the fact that prisons in Indonesia are entering an extreme overcrowding situation which then the density has an impact on the coaching program in Lapas not going well. One strategy to overcome these problems is by efforts to form and develop the concept of restorative justice.

Keywords: Peace road, restorative justice, KUHP draft.

I. INTRODUCTION

In each country, a violation of the law or the onset of conflict within the community can be resolved through the courts (litigation) and outside the court (non-litigation). Settlement of disputes through the court provides certainty for parties through court decisions that are easily accessible and coercive, while the resolution of disputes outside the court is recognized as conflict resolution and is carried out without judicial interference which is considered to be a long time on an open basis to the public so that a high potential to be imposed social sanctions anyway. In fact, in people's daily lives, the settlement of cases outside the interference of law enforcement for certain crimes is often felt to be better and more beneficial than through judicial route (Hamzah, 1987).

However, this condition also leads to the perpetrators who are freed from the law. Criminal cases that are settled outside the court are contrary to criminal law as public law. As public law, criminal law can be characterized as follows (Effendi, 2011): 1) Regulating the relationship between the interests of the state or society and individuals; 2) The position of state ruler is higher than a person. In other words, individuals are subordinated to the authorities; 3) Prosecution of someone who has committed a prohibited act does not depend on the individual (injured), but in general, the state/ruler must sue the person; and 4) the subjective matter of authorities arises from the rules of objective criminal law or positive criminal law.

*Address correspondence to this author at the Pelita Harapan University, Indonesia; Tel/Fax: +62 21 54 60901; E-mail: agus.budianto@uph.edu

That some formulation of article formulation in the Criminal Code (KUHP) is divided into ordinary offences and complaint offences. In ordinary offences, cases can be processed without the consent of victim so that even if the victim withdraws his report/complaint to law enforcement officials such as police, investigators are still obliged to continue the case proceeding whereas in complaint offences it can only be processed if there is a complaint or report from the victim so that if the victim a criminal offence can revoke its report and law enforcement officials are obliged not to proceed with the case.

Peace on ordinary criminal offences is not legally formally recognized in criminal law regulations so that implementation is considered illegal and illegal because it has no basis in positive criminal law (Abdullah, 2016). Ordinary offences such as Article 289 of the Criminal Code concerning obscene acts, Article 338 of the Criminal Code concerning murder, Article 362 of the Criminal Code concerning theft and Article 372 of the Criminal Code concerning embezzlement. Whereas criminal offences against complaints such as Article 284 of the Criminal Code concerning adultery, Article 310 of the Criminal Code concerning insults, Article 322 of the Criminal Code concerning disclosing secrets and Article 367 of the Criminal Code concerning theft in families.

However, it cannot be denied that in practice there was a decision in which the judge stated that ordinary criminal offences are possible to be resolved by peaceful means if impact caused by perpetrator's actions did not harm the public at large including the victim as considered by the Purwokerto Judge Council

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in Decision Number 247/Pid.B/2009/PN.PWT regarding the crime of theft of 3 (three) pieces of cocoa by Grandma Minah. The decision of Judge Purwokerto Number 247/Pid.B/2009/PN.PWT regarding a 55-year-old grandmother Minah who was charged with committing the theft of 3 (three) cocoa or cocoa fruit belonging to PT Rumpun Sari Antan in the District Court Purwokerto (Putro, 2010). The judge considered that:

> *"This "M case" phenomenon is attracting public attention because it touches on the human side, hurting the justice of people in the green table taking 3 (three) cocoa beans valued at Rp. 2,100 (two thousand one hundred rupiahs), activists supporting M were released, ... should the police, prosecutors and judges can see the impact caused by perpetrator's actions. If the impact is not so detrimental to society at large, including the victims, it can be handled with another approach first, not a criminal proceeding."*

Furthermore, sexual harassment case experienced by one of the students of Gadjah Mada University (UGM), Yogyakarta, was resolved outside the court even though as the law applies, the crime of sexual harassment is not a complaint, so the police or law enforcement officers are obliged to investigate this case. This case began with a student of the Faculty of Social and Political Sciences of UGM following a real work lecture program (KKN) on Seram Island, Maluku in 2017. But in the end, the case was resolved through non-litigation (mediation) channels under the supervision of the university concerned. UGM as a mediator runs a mediation process for victims and perpetrators (Kompas Daily, 2018).

Cases of sexual violence that were settled out of court occurred again on 15 August 2019. This time it happened when the victim who was under 17 (seventeen) years old used an electric train (KRL) at Manggarai Station. The perpetrators of sexual harassment, namely 27-year-old Hengki, using his left hand, hold the victim's sensitive area on the victim's chest. In response, the victim reported this incident to the police on the same day. But on August 22, 2019, the victim withdrew report he had made at Jakarta Metropolitan Police. Then, with the argument that the victim's report has been revoked, the police will consider the suspension of detention or release the perpetrators (The Jakarta Post, 2019).

That child as a successor to the nation has full rights to get protection from the state so that sexual violence against children is a serious crime because it threatens and endangers the lives of children, damages the growth and development of children and disturbs the comfort of society. The case involving a child above fulfils Article 76E of Law Number 35 of 2014 concerning Amendment to Law Number 23 of 2002 concerning Child Protection, with the criminal threat, stipulated in Article 82 paragraph (1) Government Regulation instead of Law Number 1 the Year 2016 concerning Second Amendment to Law Number 23 the Year 2002 concerning Child Protection ("Perpu Protection of Children") which reads: "Everyone who violates the provisions as referred to in Article 76E is convicted with maximum imprisonment short 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp.5,000,000,000.00 (five billion rupiah)".

After being confronted with various regulations and reasons for the importance of handling criminal acts on children, law enforcement officials choose to "omit" the occurrence of sexual violence as the case has been described above. It is possible that the "omission" carried out by law enforcement officers is based on the level of difficulty in the investigation of cases as regulated in Article 17 paragraph (4) of the Republic of Indonesia National Police Chief Regulation Number 14 of 2012 concerning Management of Criminal Investigations that there are criteria for the level of difficulty in investigating cases namely the case easy, medium case, difficult case and very difficult case. Abuse (permissiveness), in the sense of allowing the occurrence of deviations that cause the victim can be caused partly because the community is unable to react to deviation, the social control body or the victim of deviation may be afraid the possibility of conflicting consequences and the attitude of ignorance or omission this is a social climate caused by the absence of a broad reaction to inappropriate or distorted behaviour (Gosita, 2004).

Actually, besides settlement outside the court is limited, a settlement outside the court is taken to maintain harmonization so that no party will bear the shame. This is because the case is closely related to the parties (perpetrators and victims) more than other criminal cases which are (mostly) state affairs. After all, it disturbs peace and order (Raharjo, 2008). However, this becomes ambiguous when settlement through non-litigation channels becomes a consensus to avoid oneself from the shame that results in the possibility of

impunity for the law. Responding to the aforementioned background, a problem arises regarding the way of peace in ordinary offence criminal acts in terms of a criminological perspective namely how the mechanism of the peaceful road as a resolution of ordinary offence crime conflicts in RKUHP and how the mechanism of the peaceful road as a resolution of conflicts over ordinary criminal offences through criminological perspective?

II. METHODOLOGY

This research was conducted to address many demands from the community, especially the victims of violence and their families, that the case was handled very slowly by the Police. On the other hand, the Police view that cases like this are better resolved peacefully. The type of research is Sociology jurist, where main data are the legal opinions of judges and legal experts relating to the way of peace as a conflict resolution of criminal acts. Data sourced from primary data by obtaining interviews with non-random sampling technique and analyzing with secondary data. The analysis used is deductive, which is looking at the side of peaceful settlement of a case, so that certain actions are regulated regarding settlement outside the court.

III. DISCUSSION

1. Reform of Conflict Resolution in the Criminal Code Bill

RKUHP as a substitute for KUHP or Wetboek van Strafrecht in 1946 was an effort to develop national law in a directed and integrated manner with the demands of development as well as the level of legal awareness and dynamics that developed in society. The establishment of RKUHP itself means decolonization of the Criminal Code in the form of modification, the democratization of criminal law and consolidation of criminal law because, since independence, criminal law legislation has experienced rapid development, both inside and outside the Criminal Code, so it needs to be reorganized within the framework of criminal law principles that regulated in Book I of the Criminal Code. Then the preparation of RKUHP is carried out for the adaptation and harmonization of various legal developments that occur, both as a result of developments in the field of criminal law and the development of values, standards and norms recognized by civilized nations in international world as stated in the RKUHP Explanation.

The fundamental difference between the Criminal Code and RKUHP lies in the philosophy which in the Criminal Code is based on the classical school of thought that developed in the 18th century (eighteen) focusing on criminal law on acts or criminal acts while the RKHUP is based on neo-classical (*daad-dader strafrecht*) thinking which not only takes into account objective factors but also subjective factors and is also influenced by the thinking about victims of crime that developed after World War II, which pays great attention to the fair treatment of crime victims and abuse of power. *Daad-dader strafrecht* thinking is implied primarily in regulation the purpose of punishment and the development of alternative criminal short-term deprivation of liberty that directly supports the existence of a peaceful way in the form of fines sanctions as a conflict resolution against several criminal acts stipulated in RKUHP.

An effort to recodification as a Criminal Code reform has been initiated since convening of the National Law Seminar I in Semarang in 1963. This seminar was said to be the starting point of the Criminal Code reform history in Indonesia which a year later began to be formulated by the government team. However, for more than half a century, RKUHP has not been finished being discussed and passed into the Criminal Code. RKUHP file was submitted to DPR in 2013 and 2015 but has never been completed. Continuing DPR for period 2014-2019, President Jokowi issued a Presidential Letter on June 5, 2015, concerning the readiness of government in discussing RKUHP, which consisted of Book I and Book II with a total of 786 articles. When submitting RKUHP file for the second time, government and DPR agreed to complete discussion within 2 years until the end of 2017. Until mid-2015, DPR and Government Working Committee only completed Book I of RKUHP despite several pending articles. The target of completing RKUHP discussion at the end of December 2017 is backward (Sahbani, 2019). President Jokowi through a press conference on September 20, 2019, stated the postponement of 4 draft laws, one of which is RKUHP. Then on September 24, 2019, the ratification of RKUHP was postponed in a plenary meeting at the second level of DPR RI.

Reform of convictions by peaceful means has been formulated in RKUHP 2019 starting with the stipulation that prosecution authority or judicial process has been terminated starting with the investigation as stated in Article 132 paragraph 1 of RKUHP which reads:

Prosecution authority is declared void if:

a. there has been a court decision that obtained permanent legal force against someone on the same case;

b. the suspect or defendant dies;

c. expired;

d. maximum criminal fines paid voluntarily for Criminal Acts which are only threatened with a maximum fine of category III;

e. maximum penalties on category IV fines are paid voluntarily for Criminal Acts which are punishable by imprisonment for a maximum of 1 (one) year;

f. withdrawal of complaint about the criminal complaint; or

g. regulated in the Law.

The way of peace is manifested in the formulation of Article 132 paragraph 1 letter d regulates the death of prosecution authority if the criminal offence convicted of a maximum of Category III fines Rp.50,000,000.00 (fifty million rupiah) has been voluntarily paid by a party that harms or perpetrators. The provisions of Article 132 paragraph 1 letter e are explained further in the Elucidation of Article 132 paragraph 1 letter e which reads:

> *"For minor crimes that are only threatened with a fine of Category I or Category II, it is considered sufficient if the person committing the crime is not prosecuted, as long as they pay a maximum penalty that is threatened. The public prosecutor must accept the defendant's wishes to fulfil maximum fine. For crimes that are punishable by imprisonment for a maximum of 1 (one) year or a maximum fine of Category III, if the public prosecutor agrees, then the defendant can fulfil maximum fine for aborting prosecution."*

Based on these provisions it can be concluded that other criminal offences outside the provisions of Article 132 paragraph 1 of RKUHP must be followed up with prosecution or judicial process that begins with an investigation.

This is in line with the opinion of speaker Muhammad Fatahillah Akbar that every person who commits a crime must be processed according to the principle of legality in a formal sense unless the crime fulfils reason for abolishing prosecution as contained in the formulation of Article 132 paragraph 1 of RKUHP (Akbar, 2019).

The way of peace as a conflict resolution against a criminal act is manifested in the provisions of Article 132 paragraph 1 letters d and e which regulates the demise of prosecution authority if perpetrators who commit the crime voluntarily pay a criminal fine. The provision also reflects the nature of criminal law as Ultimum Remedium or the last instrument because real criminal law is the harshest law among other legal instruments that control the behaviour of the community so that the sanction of fines is the right solution so that the position of criminal law remains as Ultimum Remedium and does not become Primum Remedium. This is supported by Andi Hamzah's opinion that not all complicated problems in society must be submitted to criminal law to solve them (Januarsyah, 2017). Furthermore, criminal law as an Ultimum Remedium in the mechanism of a peaceful road to criminal offences in the realm of justice is manifested in Article 70 of the RKUHP which reads:

Article 70

1. With due regard to the provisions referred to in Article 52 and Article 54, imprisonment must not be imposed if possible, if conditions are found:

a. the accused is the Son;

b. the different is over 75 (seventy) years old;

c. the first time a defendant has committed a crime;

d. the loss and suffering of the victim is not too great;

e. the defendant has paid compensation to the victim;

f. the defendant did not realize that the Criminal Act committed would result in large losses;

g. criminal offences occur because of very strong incitement from others;

h. Victims of criminal acts encourage or mobilize the occurrence of such Crime;

i. the criminal act is the result of a situation that is not likely to be repeated;

j. the defendant's personality and behaviour assured that he would not commit any other crime;

k. imprisonment will cause great suffering to the defendant or his family;

l. guidance outside prison is expected to be successful for the defendant;

m. lighter criminal sentences will not reduce the serious nature of the Criminal Act committed by the defendant;

n. Crime occurs among the family; and /or

o. Criminal offence occurs due to negligence.

2. The provisions referred to in paragraph (1) do not apply to criminal offences that are threatened with imprisonment of 5 (five) years or more, threatened with special minimum penalties or certain criminal acts which are very dangerous or detrimental to the community, or detrimental to financial or country's economy. "

Based on Article 70 of KUHP, it can be concluded that the judge in deciding a case must consider several provisions which then serve as a reason for the judge not to impose a prison sentence. The provision of Article 70 paragraph 1 letter d, letter e, letter h means that the victim has an important role in the judge's judgment to impose sanctions on the defendant.

This has similarities with the opinion of the speaker Edward Omar Sharif Hiariej who stated that the victim has an important role in a crime, what is different is the source stated that if the victim stated sufficiently with restoration of justice such as compensation or compensation then the crime should have been completed, while the formulation of Article 70 RKUHP only stipulates that there are provisions that are considered not to impose prison sanctions on the defendant, in other words, criminal act continues in the trial (Hiariej, 2019).

The same thing was stated by the guest speaker Eddy Wibowo that although there has been a peace deed between two parties (in this case the victim and the perpetrator) did not make the case stop but only became a mitigating factor for the judge in deciding the case, things that could be a mitigating factor Among other things, is the crime committed repeatedly or for the first time, what his motive for committing the crime, how widespread is the impact of the crime, does the defendant claim to have committed the crime and finally is the courtesy of the defendant during trial (Wibowo, 2019). Eddy Wibowo's opinion is following several provisions of Article 70 paragraph 1, such as letter c that the defendant is the first time to commit a crime, letter k that the prison sentence will cause great suffering for the defendant or his family, and so forth. The provisions in Article 71 of RKUHP again extend the authority of judges to impose sanctions on the defendant, saying:

Article 71

1. If a person commits a criminal offence that is only threatened with imprisonment for less than 5 (five) years, whereas the judge thinks that it is not necessary to impose a prison sentence after considering the criminal purpose and criminal guidelines as referred to in Article 52 and Article 54, that person may be sentenced to a fine.

2. The criminal penalty as referred to in paragraph (1) may only be imposed if:

a. without Victim;

b. The victim doesn't mind; or

c. not a repeat of criminal action.

2. Criminal fines that can be imposed based on the provisions as referred to in paragraph (1) shall be the maximum fines according to category V and the least fines according to category III.

3. The provisions referred to in paragraph (2) letter c do not apply to persons who have been sentenced to prison for a Criminal Act committed before 18 (eighteen) years of age. "

That Article 71 paragraph 1 RKUHP aims to overcome the rigid nature of a single criminal formulation that seems to require the judge to only impose a prison sentence and is intended to avoid the imprisonment of a short prison sentence as the Explanation of Article 71 paragraph 1 of RKUHP. The provisions of Article 71 of RKUHP are an expansion as well as an affirmation the provisions of Article 70 of RKUHP which regulates that there are several considerations so as not to impose imprisonment. Speaker Edward Omar Sharif Hiariej confirmed that the formulation of Article 71 of RKUHP allows judges to impose fines if he thinks there is no need for

imprisonment because not every crime should be included in prison, one of the facts expressed by informants other than prisons that are overcapacity is the state provides a very large budget of 3 (three) trillion for the food needs of prisoners and detainees in 1 (one) year.

As stated in the Elucidation of RKUHP Article 79, the determination of the level of category I to category VII is calculated as follows:

1. The lightest maximum category penalty (category I) is a multiple of 20 (twenty) from the general minimum.

2. For category II is a multiple of 10 (ten) times from category I, for category III is a multiple of 5 (five) times from category II and for the category, IV is a multiple of 2 (two) times from category III.

3. For category V up to category VIII determined from the highest division of categories with the same pattern, namely category VII is the result of the division of 10 (ten) from category VIII, category VI is the result of the division of 5 (five) of category VII, and category V is the results of division 2 (two) from category VI.

Furthermore, the provision in Article 80 regulating that judges in imposing fines shall be obliged to consider the ability of defendant by taking into account the defendant's income and expenditure significantly, although such considerations will not reduce the specific application of specified minimum criminal fines.

2. Mechanism of the Criminal Way in Criminology Perspective

Law enforcement to prevent crime is important because crime is damaging public safety and happiness. According to Cesare Beccaria sanctions are essential in law enforcement and sanctions are needed not to torture sentient beings or to cancel crimes that have been committed but to prevent criminals from further harming the community and preventing others from similar acts (Beccaria, 2011). Cesare Beccaria also stated that the small crimes that were forgiven by the victims did not revoke the state's right to punish the perpetrators, Eddy Wibowo stated that the deed of peace between the perpetrators and victims did not stop criminal justice process but only became a mitigating factor in the judge's judgment when deciding the case. Likewise, Muhammad Fatahillah Akbar's statement that every person who commits a crime must be processed based on the principle of legality in a formal sense.

Also, the crime was resolved by peaceful means which resulted in the offender not being prosecuted and perpetrators rejoined the community without understanding that he had committed deviant behaviour. This deviant and unprocessed perpetrator's behaviour has the potential to be learned by others through social interaction according to Edwin H. Sutherland's differential association theory. Differential associations as the contents of patterns presented in the association would differ from individual to individual. In the sense that the contents of exemplary patterns introduced in the association will differ from individual to individual. However, it does not mean that only association with criminals will cause evil behaviour, but the most important is the content of the communication process with these other people (Djanggih & Qamar, 2018).

This theory is sociological because the study focuses on social relations which include the frequency, intensity and role of the association. According to Sutherland fundamental fact used is differential social organizations in the surrounding community, namely that differential associations cause criminality to individuals and are a logical consequence of the principle of learning with these associations (social learning). The conclusion is someone will experience changes following their expectations and views, namely when dealing with close friends. If these conditions are met then evil behaviour can arise as a result of social interaction.

As the nine propositions (proposition) proposed by Sutherland in differential association theory, namely (Santoso, 2008): one of them is: Criminal behaviour is learned in interaction with other people in a process of communication Someone does not just become a criminal just because they live in a criminal environment. Crimes are learned with others both in verbal and non-verbal communication. Peaceful way as a conflict resolution that results in the perpetrators breaking away from the bondage of law and then opening the way for perpetrators to re-mingle in society is certainly in conflict with Sutherland's second proposition, namely criminal behaviour is learned in interaction with other people in a process of communication (criminal behaviour is learned in interactions with others in the communication process). Someone does not just become a criminal just because they live in a criminal environment. Crimes are learned

with others both in verbal and non-verbal communication. Verbal communication is manifested in direct conversation and includes body language which is often categorized as non-verbal communication. An example is when someone who is constantly communicating with an inmate so that someone indirectly learns about a crime, then that person has the potential to commit the same crime.

Sutherland's differential association theory studies the cause of the emergence of crime that is through one's learning process so that through opinion it seems to direct to give appropriate lessons to the perpetrators of crime so that deviant behaviour is not imitated by the public. But the fact that this understanding is wrong to be fully applied so that the understanding of the importance of resolving a conflict originating from the crime itself needs to be explored further. There is a basic assumption that the use of imprisonment including detention efforts imposed on suspects/defendants is very useful to create a deterrent effect. But the reality is that the application of imprisonment does not change the convict for the better as stated by Eddy Wibowo.

The same thing was stated by Edward Omar Sharif Hiariej that prisons in Indonesia were over capacity and this condition made the budget more difficult which then had to be issued by the state. The fact is the application of imprisonment to criminal offences in Indonesia has entered an extreme overcrowding situation, which as of December reached 188% when measured using occupancy rate (the number of prisoners per official prison capacity), which then prison density had an impact on coaching programs in prison. going well such as fleeing prisoners, riots from inside prison, narcotics distribution controlled from inside prison, burning prison by prisoners, illegal levies by prison officers and so forth (Novian, et., all, 2018). Based on this fact, it is understandable that convicts fostered by prison are not efficient enough to change them for the better so that when ex-convicts who are not properly coached re-mingle into the community, verbal and non-verbal communication will continue to be established, then the community will learn about crime and potential to commit crime as Sutherland's differential association theory.

The strategy to overcome the overcrowding situation in Indonesia is one of them by forming and developing a policy of non-prison sanctions (alternatives of imprisonments) and restorative justice. The fact is that justice in Indonesia has led to a restorative justice model. Found in Pancasila as the basic philosophy of the nation that is the 4th Precept of Pancasila which contains the philosophy of consultation or deliberation, the meaning contained is to prioritize deliberation in making decisions for common good and respecting any deliberative decisions, decisions taken must be morally accountable to God Who Almighty, upholding human value and dignity, the values of truth and justice give priority to unity and unity for common good. The 4th Sila Pancasila mandates to choose deliberation.

Indonesia itself applies the concept of restorative justice for juvenile justice system through diversion as interviewed by Carel Williams during the experience of resource person being the Public Prosecutor that against only criminal acts of children who apply the principles of restorative justice such as diversion (William, 2019). The implementation certainly involves three interests, namely victims, perpetrators of crime and the community. The importance of balancing interests in the value of accountability for victims and the community to be fulfilled, the value of competency development for perpetrators (children) who after going through a restorative process is expected to be more able to integrate with the community than before and the value of community protection because restorative justice system is responsible for protecting the public from criminal acts children through peaceful means (peacefully resolved) (BPHN, 2019).

In addition to the juvenile justice system, indirectly the concept of restorative justice is carried out in Law Number 2 of 2002 concerning the Indonesian National Police giving the authority to the police to carry out their duties and authorities following their assessment by taking into account applicable laws and regulations. The granting of authority to the police is better known as police discretion so that the police can take action according to their consideration in the public interest. It should also be understood that peaceful path taken can be due to difficulties faced by law enforcement officials to investigate the case. As regulated in Article 17 paragraph (4) of the Regulation of the Head of the Indonesian National Police Number 14 of 2012 concerning Management of Criminal Investigations that there are criteria for the difficulty of investigating cases namely easy cases, medium cases, difficult cases and very difficult cases.

Likewise in the Regulation of the Chief of the Republic of Indonesia National Police Number 6 the Year 2019 regarding Criminal Investigation in Article 12

which could be the reason for settlement outside the court of sexual harassment cases experienced by UGM students and a 17-year-old woman in KRL Manggarai Station, reads: In the process of investigation restorative justice can be carried out, if the conditions are met: *First,* Materiel, including (1) not cause public unrest or no public rejection; (2) not impact social conflict; (3) a statement from all parties involved not to object, and waive the right to sue before the law; and (4) delimiter principle: (a) to the perpetrators: the level of error of the perpetrators is relatively not serious, namely mistakes in the form of intent; and non-recidivists; (b) on criminal acts in the process: investigation and an investigation, before SPDP is sent to the Public Prosecutor.

Second, Formal, including: (1) peace request letter for both parties (whistleblower and reported); (2) peace declaration letter (deed of dating) and dispute resolution of parties who are litigants (the complainant, and/or reporting family, reported and/or reported family and representatives of community leaders) are known by the investigator's superiors; (3) minutes of additional examination of litigation parties after the settlement of the case through restorative justice; (4) recommendations for special case titles that approve the restorative justice settlement*;* and(5) the perpetrators do not object and are voluntary of their responsibilities and compensation.

As Article 12 of Regulation of the Head of the Indonesian National Police Number 6 of 2019 concerning Criminal Investigations supports the application of restorative justice if the case does not cause public unrest, does not impact social conflict and there are statements from all parties to not object and release the right to sue before the law in line with the law Bambang Priyana's opinion as an investigator of Yogyakarta Regional Police stated that the victim as reporting party has an important role in the continuation of the case because if the victim does not want to proceed with the court then the victim has the right to retract report so that the case will not proceed to the court, however, This does not apply to serious crimes such as homicide. If for a crime that has been reported to the police, then there is a peace agreement between the victim and perpetrator, the victim can retract report in the police so that the case will not proceed with the investigation (Priyana, 2019).

Likewise, if there is a statement of peace between the parties (the complainant and reported), peace statement (deed) and settlement of dispute the parties are known to the superior of Investigator, as well as the perpetrator has no objection and voluntarily undertakes responsibility and compensation in line with Benny Situmeang's opinion during his duties as an investigator at the Jakarta Police stated that not all complaints must be processed by the police, it was returned to the two parties in dispute (victims and perpetrators) namely whether one of the parties in dispute felt disadvantaged or not If both parties do not feel disadvantaged, usually both parties will agree in this case a win-win solution not to arrive at court (Situmeang, 2019). The conclusion is that if there is no agreement to settle peacefully outside the court, the case will go to court.

Also, provisions are governing the types of cases and decisions that cannot be appealed as in Article 45A paragraph (2) of Law Number 5 of 2005 concerning Amendment to Law Number 14 of 1985 concerning the Supreme Court that excludes criminal case decisions can not appeal, namely pretrial case verdict, the verdict in a criminal case which is threatened with imprisonment for a maximum of 1 (one) year and/or threatened with criminal fines and state administrative cases whose object of the lawsuit is in the form of a regional office's decision whose scope of the decision is valid in territory the area concerned. In the realm of criminal law, it is regulated in Article 205 paragraph (3) of the Criminal Procedure Code that regulates that district court decisions in quick proceedings (in this case minor criminal cases) constitute the first and last level of justice (cannot be appealed) and Article 244 of the Criminal Procedure Code prohibits cassation against free verdicts and court decisions in a quick event.

One tangible form the concept of restorative justice is to use mediation, namely efforts to resolve disputes involving neutral third parties and do not have the authority to make decisions in the dispute in question. That mediation is not a new method of resolving disputes in Indonesia. Mediation has a huge opportunity to develop in Indonesia. Following eastern traditions that are still rooted, the community prefers to maintain good relations between families or relationships with business partners rather than a momentary profit if a dispute arises. Resolving disputes in court may yield huge profits if you win, but the relationship can also be damaged (Syukur, 2011).

Mediation can spearhead legal reform in Indonesia. Following the harmony between mediation and Indonesian culture, mediation also directly plays a role

in preserving traditions that live in the community. In the opinion of Christa Pelikan and Thomas Trenczek quoted by Edward Omar Sharif Hiariej in his book Revised Edition Principles of Criminal Law that mediation can be applied at all stages in the criminal justice process name in the investigation, investigation, prosecution and even trial stage (Hiariej, 2016). According to the Big Indonesian Dictionary, mediation is the process of involving a third party in the resolution of a dispute as an advisor.

Criminal mediation aims to make the perpetrators aware that their actions are wrong and also to realize that the victim needs to be repaired. Criminal mediation is under the auspices of criminal law and authority in the criminal justice process. This mediation is intended to stop the ongoing criminal proceedings, therefore mediation is by no means intended for serious crimes. Some of the arguments that criminal mediation must be seen as criminal and can function to achieve the proper objectives of penalties themselves. First, mediation is a communicative process. The procedure consists of communication between the victim and perpetrator regarding criminal implications as a crime against the victim. Second, criminal mediation is retributive. This imposes appropriate suffering on the perpetrators for criminal actions they have committed. Third, reparations by offenders are a type of harsh punishment that is deliberately designed to burden, drain time, money or energy and freedom from perpetrators. Fourth, although criminal mediation is retributive, it looks back on past criminal acts, but also leads to the future. It aims to reconcile the perpetrators and victims through reparations of remorse from the perpetrators. It also aims to prevent perpetrators of criminal acts in the future.

As the opinion of the speaker Edward Omar Sharif Hiariej stated that there was not a single country that applied the same concept of mediation, such as Belgium which applied the concept of dual-track restorative justice in which the concept of mediation was in tandem with the court process so that the higher possibility of victims being recovered, lighter the sentence, vice versa. Criminal mediation is essentially following the paradigm of modern criminal law which is no longer oriented towards retributive or retaliatory aspects but rather emphasizes corrective, rehabilitative and restorative aspects. Corrective relating to wrongdoers that must be corrected, rehabilitative is to improve the perpetrators so that they no longer repeat their actions in the future, while restorative focuses on the recovery of crime victims.

Based on the Republic of Indonesia's Chief of Police Regulation No. 6 of 2019 concerning Criminal Investigation in Article 12 paragraph 2 that investigation process can be carried out restorative justice if formal requirements are met, one of them is a statement of peace (deed dating) and settlement of disputes between litigants (reporters, and/or the family of reporting party, reported party and/or reported family and representatives of community leaders) are known by the superior of Investigator, so we can conclude that in criminal justice system we adhere to mediation. For example, the application of penalties mediation to acts of violence in the household through the authority of police discretion and the crime of traffic accidents that cause death (Abdullah, 2016).

III. CONCLUSION

The way of peace as a conflict resolution towards criminal acts is manifested in the provisions of criminal reform in RKUHP, Article 132 paragraph 1 letter d and e which regulates the demise of prosecution authority if the perpetrators who commit criminal acts voluntarily pay criminal fines. Then mechanism for a peaceful road to criminal acts in the realm of justice is manifested in Article 70 of the RKUHP which regulates several provisions that can be considered by judges not to impose a prison sentence, particularly against the provisions of RKUHP Article 70 paragraph 1 letter d namely the loss and suffering of the victim is not too large and letter e the defendant has paid compensation to the victim. Furthermore, Article 71 of RKUHP allows judges to impose financial penalties if according to them there is no need for imprisonment. The category of criminal fines is regulated in Article 79 of RKHUP as a substitute for imprisonment.

The way of peace towards a criminal act is contradictory when viewed through a criminological perspective, namely through Cesare Beccaria's thought which states that the authority to punish is the property of the state. Likewise with Sutherland's opinion in the theory of differential association second argument that the cause of the emergence of crime through one's learning process so that based on the argument, the perpetrators should be given appropriate sanctions so that deviant behaviour is not imitated by the public. However, the fact that basic assumption that the use of imprisonment against accused is very useful to provide a deterrent effect is wrong. The application of imprisonment does not change convict for the better, coupled with the fact that prisons in Indonesia are entering an extreme overcrowding situation which then

density has an impact on coaching program in prison is not going well. One strategy to overcome these problems is by efforts to form and develop the concept of restorative justice that has been applied injustice system for children and is recognized explicitly and implicitly in Law Number 2 of 2002 concerning the Indonesian Police, Law Number 5 of 2005 concerning Amendment to Law Number 14 of 1985 concerning the Supreme Court, Regulation of the Head of the Indonesian National Police Number 14 of 2012 concerning Management of Criminal Investigations, and Regulation of the Head of the Indonesian National Police Number 6 of 2019 concerning Criminal Investigation.

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